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# UNDOCUMENTED IMMIGRANTS. STATE AND LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAW. INITIATIVE STATUTE.

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November 30, 2015

California Attorney General Kamala Harris  
Attn: Ashley Johansson, Initiative Coordinator  
1300 I Street, 17<sup>th</sup> Floor, Post Office Box 944255  
Sacramento, California 94244-2550

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INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

To Ashley Johansson,

This is the written request for your review of the permitted modifications within 35 days of submission for the proposed initiative measure, known as Davis-Oliver and Kate's Law, Protecting Americans. There are two copies, the first with redlines specifically noting the revisions for internal review, and the second is the final un-edited copy.

Thank you,

*Ted Hilton* *Jerry Mailhot*

Proponents: Ted Hilton and Jerry Mailhot

Public contact address:

POB 9985 San Diego 92169 CA

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SEC. 1.** This measure shall be known and may be cited as Davis-Oliver and Kate's Law, Protecting Americans.

**SEC. 2.** Chapter 3.5 (commencing with Section 653.65) is added to Title 15 of Part 1 of the Penal Code, to read:

**CHAPTER 3.5. COOPERATIVE ENFORCEMENT OF FEDERAL IMMIGRATION LAW.**

**653.65 (a)** Each state or political subdivision of this state, including any law enforcement entity of this state or political subdivision of this state, shall provide to the Secretary of Homeland Security in a timely manner with identifying information with respect to each alien in the custody of the state, or political subdivision of the state, who is believed to be inadmissible or deportable.

**(b)** For any lawful contact made by a law enforcement official or agency of this state or a county, city and county, city, town or other political subdivision of this state, a law enforcement official may inquire of the person's immigration status, and where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made, in a timely manner, to determine the immigration status of the person. The immigration status of the person shall be verified with the federal government pursuant to 8 United States Code Section 1373 (c).

**(c)** Upon notification that an arrested person is unlawfully present in the United States, the arresting agency shall immediately verify with the United States Department of Homeland Security whether an immigration detainer is to be issued for such person.

**(d)** A state or local law enforcement agency having custody of an alien for whom a request for a detainer has been received from federal immigration authorities shall not release the alien from custody, but shall retain custody of the alien to the extent permitted under federal law for transfer of the alien into federal custody.

**(e)** A government entity or official shall comply with a request made by the Department of Homeland Security to notify about the release of an alien, and for access to a jail or correctional facility, to an inmate, or to any inmate documentary record or information.

(f) Notwithstanding any other provision of law, a law enforcement agency may securely transport an alien who is unlawfully in the United States and who is in the agency's custody to a federal facility in this state or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency.

**SEC. 3.** Section 11057 is added to the Penal Code, to read:

**11057. (a)** The Secretary of Homeland Security is authorized and directed to negotiate the terms of a Memorandum of Agreement, pursuant to 287 (g) of the United States Immigration and Nationality Act, between the State of California and the United States Department of Homeland Security, providing for designated law enforcement officers to perform certain functions of federal immigration officers within the State of California.

(b) The Memorandum of Agreement negotiated pursuant to subsection (a) shall be signed on behalf of the state by the Attorney General.

(c) A state or local law enforcement agency may designate to the Department of Homeland Security one or more peace officers who shall be trained pursuant to the Memorandum of Agreement.

(d) The Attorney General shall make requests for funds to advance training of additional officers, pursuant to Section 287 (g) of the United States Immigration and Nationality Act, to be stationed at each booking, jail and correctional facility to perform immigration law enforcement functions, including the identification, apprehension, and detention of inadmissible or deportable aliens, and to combat transnational organized crime committed by deportable alien cartels or gangs.

**SEC. 4.** Section 11059 is added to the Penal Code, to read:

**11059. (a)** Notwithstanding any other provision of law, no official or agency of this state or political subdivision therein may prohibit or in any way restrict any peace officer from inquiring into the citizenship or immigration status of a person for the following purposes:

(1) For the purpose to comply with any agreement between the U.S. Department of Homeland Security, Immigration and Customs Enforcement and the State of California.

(2) For any other lawful purpose, to the fullest extent permitted under federal law.

(b) Except as provided in federal law, officials or agencies of this state, or political subdivision therein, may not be prohibited or in any way restricted from collecting, sending, receiving, or maintaining information relating to the immigration status of any individual or exchanging that information with any other federal, state, or local governmental entity for the following official purposes:

1) Verifying any claim of residence or domicile if determination of residence or domicile is required under the laws of this state, or a judicial order pursuant to a civil or criminal proceeding in this state.

2) Determining eligibility for any public benefit, service or license provided by any federal, state, local or other political subdivision of this state.

3) Confirming the identity of any person who is detained.

4) If the person is an alien, determining whether the person is in compliance with the federal registration laws prescribed by Title II, Chapter 7 of the Federal Immigration and Nationality Act.

(c) No state or political subdivision of this state, including any law enforcement entity of this state or of a political subdivision of this state, shall have in effect any of the following:

(1) A statute, ordinance, policy or practice that is in violation of subsection (a) or (b) of section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373.)

(2) A statute, ordinance, policy or practice that prohibits any government entity or official from complying with a detainer that has been lawfully issued or a request to notify about the release of an alien that has been made by the Department of Homeland Security in accordance with sections 236 and 287 of the Immigration and Nationality Act (8 U.S.C. 1226 and 1357) and section 287.7 of title 8, Code of Federal Regulations.

(d) Notwithstanding any other provision of law, a state or local government entity or official shall not issue in the form of resolutions, ordinances, administrative actions, general or special orders, departmental policies, or any other forms of guidance that violate federal law or restrict any state or political subdivision of this state from assisting in the enforcement of federal immigration law, complying with federal law or coordinating with

**federal law enforcement.**

**(e) A person may bring an action in Superior Court to challenge any official or agency of this state or a county, city, town or other political subdivision of this state that adopts or implements a resolution, ordinance, administrative action, general or special orders, or departmental policies, that limit or restrict the provisions of this section. If there is a judicial finding that an entity has violated this section, the court shall order the following:**

**(1) That the person who brought the action recover court costs and attorney fees.**

**(2) That the entity which violates the provisions of this section shall pay a civil penalty of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000) for each day that the policy has remained in effect after the filing of an action pursuant to this subsection.**

**(f) A court shall collect the civil penalty prescribed in subsection (e) and remit the civil penalty for deposit into the Peace Officers Training Fund, created under California Penal Code § 13520.**

**SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.**

**SEC. 6. (a) The provisions of this act are severable. If any provision of this Act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.**

**(b) The terms of this Act regarding immigration shall have the meanings applied under federal immigration law.**

**(c) The provisions of this Act shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons.**

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

**UNDOCUMENTED IMMIGRANTS. STATE AND LOCAL ENFORCEMENT OF**

**FEDERAL IMMIGRATION LAW. INITIATIVE STATUTE.** Requires state and local agencies

to report those believed to be undocumented immigrants in their custody to federal immigration

authorities. Bars release of undocumented immigrant if federal immigration authorities request hold.

Provides for designating state/local law enforcement officers to perform certain federal immigration

officer duties. Prohibits state/local laws or policies that restrict state/local officials from assisting

enforcement of federal immigration law. Authorizes civil penalties against agencies or officials that

adopt or implement any state/local law or policy against assisting enforcement of federal immigration

law. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on

state and local government: **Increased state and local law enforcement and corrections costs**

**that could potentially reach several millions of dollars annually, a portion of which could**

**be offset by the potential receipt of additional federal funds for law enforcement training.**

(15-0099.)